

REMARKS

Claims 44, 46-48, 50, 59, 60, 62-77 and 81-285 were pending in the application. Claims 46, 48, 50, 62, 70, 75, 77, 81, 82 and 87 have been amended. Accordingly, claims 44, 46-48, 50, 59-60, 62-77 and 81-285 will remain pending upon entry of the instant amendment.

Support for the claim amendments and new claims can be found in the original claims and specification as filed. No new matter has been added by way of these amendments.

The foregoing claim amendments and cancellations should in no way be construed as an acquiescence to any of the Examiner's rejections and were made solely to expedite prosecution of the present application. Applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

Rejection of claim 50 Under 35 USC § 112, second paragraph.

The Examiner has rejected claim 50 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner contends that the phrase "wherein the tumor cell is..." has improper antecedent basis since claim 46, upon which claim 50 depends, "refers to tumors and not to tumor cells."

Claim 50 has been amended so that the claim now recites "wherein the *tumor* is selected from the group consisting of breast, testicular, colon, lung, ovary, bladder, uterine, cervical, pancreatic, and stomach *tumors*," thereby rendering the rejection moot.

Rejection of claims 48, 75, 77, 87, 100-110, 171-181, 193-203 and 264-274

Under 35 USC § 112, first paragraph.

The Examiner has rejected claims 48, 75, 77, 87, 100-110, 171-181, 193-203 and 264-274 under 35 USC § 112, first paragraph for lack of enablement. The Examiner states that the "specification does not provide evidence that the claimed

biological materials are (1) known and readily available to the public: (2) reproducible from the written description” and that “a suitable deposit for patent purposes is suggested.” In particular, the Examiner states that “the specification lacks complete deposit information for the deposit of hybridoma cell line A6C12.11, A19A10.30 and A17A2.16,” and that “[i]t is not clear that cell lines possessing the identical properties of the aforementioned cell lines are known and publicly available, or can be reproducibly isolated from nature without undue experimentation.”

Responsive to the rejection, independent claims 48, 75, 77 and 87 (and claims 100-110, 171-181, 193-203 and 264-274, which depend therefrom, respectively) have been amended to remove reference to hybridoma cell lines A6C12.11, A19A10.30 and A17A2.16, thereby rendering the rejection moot.

Rejection of claims 44, 46, 50, 59-60, 62-70, 82, 111-128 and 215-221

Under 35 USC § 112, first paragraph.

The Examiner has rejected claims 44, 46, 50, 59-60, 62-70, 82, 111-128 and 215-221 for lack of written description as containing new matter. In particular, the Examiner contends that the phrase “from about amino acid 46 to about amino acid 62 of SEQ ID NO: 1 or SEQ ID NO: 2” lacks support in the specification, since the terminology “about” is allegedly not disclosed in the specification.

In the interest of expediting prosecution and in no way acquiescing to the validity of the Examiner’s rejection, claims 46, 62, 70 and 82 (and claims 44, 50, 59-60, 63-69, 111-128 and 215-221, which depend therefrom) have been amended to recite “from amino acid 46 to amino acid 62 of SEQ ID NO:1 or SEQ ID NO: 2.” In view of the amendment to the claims, this rejection has been rendered moot.

Rejection of Claims 44, 46-48, 50, 59, 60, 62-77 and 81-285 Under the Judicially

Created Doctrine of Obviousness-Type Double Patenting.

Claims 44, 46-48, 50, 59, 60, 62-77 and 81-285 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being

unpatentable over claims 90-91, 93-105 and 107-122 of co-pending Application No. 10/945,853.

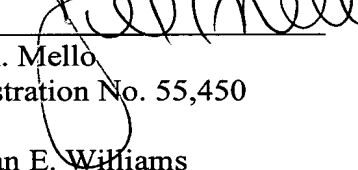
Applicants respectfully acknowledge the provisional rejection of these claims. However, since claims 88-104 of the '853 application are not presently patented or indicated as allowed, Applicants will address this rejection in the co-pending application and consider filing a terminal disclaimer at that time.

CONCLUSION

If a telephone conversation with the Applicant's Attorney would expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at 617-227-7400.

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Respectfully submitted,

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